

Election/Restrictions

Applicant hereby elects with traverse Species III (Figures 9-15) as set forth in the Office Action. Applicant respectfully submits that claims 1-11 and 19-31 read on the elected species, with claims 1 and 8 being generic.

REMARKS

Applicant traverses the election of species requirements as being improper. There are two criteria for a proper requirement between patentably distinct inventions: (A) the inventions must be independent; and (B) there must be a serious burden on the examiner if restriction is required. MPEP § 803. For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. (Id.) If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. (Id.)

The Examiner has not demonstrated a serious burden by showing appropriate explanation of separate classification, or separate status in the art, or a different field of search. In fact, other than stating that the structure shown in the figures of the different species is considered to be patentable over the structure shown in each of the other species, no justification for the requirement was provided. As such, the Examiner failed to provide a prima facie showing of a serious burden. Accordingly, an examination of all claims on the merits is required, even if the application includes claims to distinct or independent inventions. *See* MPEP § 803.

Applicant further submits that the subject matter of each of the five identified species would individually require searching in the same classes and subclasses. Thus, regardless of whether all claims are examined together or separately, a review of the same classes and

subclasses is required.

As such, the search and examination can be made without a serious burden. Accordingly, an examination on the merits of all the claims of Species I-V is required, even if the application includes claims to distinct or independent inventions. *See* MPEP § 803.

Therefore, the election requirement is improper. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the requirement.

In light of the foregoing remarks, this application is now in condition for an examination on the merits, and early action is respectfully requested. If any questions remain regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed due. However, please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 500601 (Docket No. 780-A04-002-1).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul D. Bianco", with a large, sweeping flourish extending from the top left of the signature.

Paul D. Bianco, Reg. # 43,500

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